

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 5268 of 1997

For Approval and Signature:

Hon'ble MR.JUSTICE S.K.KESHOTE

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1. Whether Reporters of Local Papers may be allowed to see the judgements?
2. To be referred to the Reporter or not?
3. Whether Their Lordships wish to see the fair copy of the judgement?
4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder?
5. Whether it is to be circulated to the Civil Judge?

BIPINKUMAR JIVANLAL SOLANKI

Versus

STATE OF GUJARAT

Appearance:

MR JR NANAVATI for Petitioner

MR DA BAMBHANIA for Respondents

CORAM : MR.JUSTICE S.K.KESHOTE

Date of decision: 05/02/98

C.A.V. JUDGEMENT

1. Challenge has been made by the petitioner to the order dated 7th July, 1997 of the respondents under which his services were terminated.

2. The learned counsel for the petitioner contended that the petitioner has been given the appointment on compassionate ground and the appointment has been taken back under the garb of termination of services on the

ground that the fact disclosed by him regarding the income of his family was not found true but before passing such an order, the petitioner has not been given the opportunity of hearing.

3. The learned counsel for the respondents, on the other hand, contended that the petitioner's mother is already in service and as such, it cannot be said to be a case where the petitioner should have been given the appointment on compassionate ground. The petitioner claiming the appointment on compassionate ground as a source of recruitment which is not correct.

4. I have given my thoughtful consideration to the submissions made by the learned counsel for the parties.

5. The father of the petitioner expired on 14th March, 1976 and admittedly the petitioner applied for giving him the compassionate appointment on 3rd July, 1987 i.e. after 11 years of the death of his father. It is true that the petitioner would have been minor but it is also equally true that the petitioner's mother had applied for the appointment on 2-7-1977 and her case was recommended for giving her appointment as Class-IV. Her application came to be accepted for the post of sweeper and the said post was offered to the mother of the petitioner, but she did not turn back to join the post. However, the petitioner's mother has been taken in the employment of E.S.I. department where she is drawing the salary of Rs.3100/- p.m.. So it is a case where the mother of the petitioner has been offered the compassionate appointment but she has not accepted and as such that fact goes against the petitioner. Secondly, the mother of the petitioner is in service and even if it is taken that she was a daily wage in the year 1980 for fixed salary of Rs.195/- p.m., the fact remains that later on she has been taken on full salary. So this claim of the petitioner for compassionate appointment otherwise has wrongly been accepted by the respondents and even if his services were terminated without hearing the petitioner, this Court will not interfere in the matter. The interference of this Court if made in this matter then what this Court will do to restore the appointment of the petitioner on compassionate ground for which he was legally not entitled. It is a case where the petitioner has made an attempt to get the appointment under the garb of compassionate appointment for which otherwise he was not entitled.

6. The object and purpose of compassionate appointment has been considered recently by their

Lordships of the Hon'ble Supreme Court in the case of Haryana State Electricity Board vs. Hakim Singh reported in 1997 (8) SCC 85. It is advantageous to reproduce the relevant portion of the judgment, which reads as under:

12. We are of the view that the High Court has erred in overstretching the scope of the compassionate relief provided by the Board in the circulars as above. It appears that the High Court would have treated the provision as a lien created by the Board for a dependant of the deceased employee. If the family members of the deceased employee can manage for fourteen years after his death one of his legal heirs cannot put forward a claim as though it is a line of succession by virtue of a right of inheritance. The object of the provisions should not be forgotten that it is to give succour to the family to tide over the sudden financial crisis befallen the dependants on account of the untimely demise of its sole earning member.

13. This Court has considered the scope of the aforesaid circulars in Haryana SEB vs. Naresh Tanwar (1996 (8) SCC 23). In that case the widow of a deceased employee made an application almost twelve years after the death of her husband requesting for accommodating her son in the employment of the Board, but it was rejected by the Board. When she moved the High Court the Board was directed to appoint him on compassionate grounds. This Court upset the said directions of the High Court following two earlier decisions rendered by this Court, one in Umesh Kumar Nagpal vs. State of Haryana (1994 (4) SCC 138), the other in Jagdish Prasad vs. State of Bihar (1996 (1) SCC 301). In the former, a Bench of two Judges has pointed out that "the whole object of granting compassionate employment is to enable the family to tide over the sudden crisis. The object is not to give a member of such family a post much less a post for the post held by the deceased". In the latter decision, which also was rendered by a Bench of two Judges, it was observed that "the very object of appointment of a dependant of the deceased employees who die in harness is to relieve unexpected immediate hardship and distress caused to the family by sudden demise of the earning member of the family". The learned Judge pointed out that if the claim of the dependant which was

preferred long after the death of the deceased employee is to be countenanced it would amount to another mode of recruitment of the dependant of the deceased government servant "which cannot be encouraged, dehors the recruitment rules".

7. Present is not a case where there may be any semblance of justification in the claim of the petitioner for compassionate appointment. The petitioner's mother was earlier offered the compassionate appointment, as stated earlier, but she declined. So it cannot be said that otherwise also the family was facing the financial hardship or crisis, which justifies the claim of the petitioner. On the contrary, the mother of the petitioner was offered the compassionate appointment but she declined to accept the same which goes to show that the family was not facing any financial crisis or hardship. If it would have been a case of financial crisis or hardship due to the death of the father of the petitioner, his mother should not have declined to accept the appointment in the year 1977. So it is a case where the petitioner want to encash this policy of compassionate as a source of recruitment.

8. In the result, this special civil application fails and the same is dismissed. Rule discharged. The amount of costs of Rs.1500/- deposited by the petitioner, in case has not been refunded to him so far, the same may be paid to the respondents.

zgs/-